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IN THE HIGH COURT OF DELHI AT NEW DELHI

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W.P.(C) 6316/2016

ATLAS INTERACTIVE INDIA PVT. LTD & ANR. Petitioners

Through: Mr.Rupender Singh, Mr.Varun Arora
and Mr.Abhishek Singh Baghel,
Advocates

versus

UNION OF INDIA & ORS.

..... Respondents

Through: Mr.Ashish Dholakia, Adv. for
R-1/UOI.
Mr.Pritpal Singh Nijjar, Mr.Amit
Kumar, Mr.Pranavakshar Kapur and
Mr.Siju Thomas, Advocates for R-2.
Mr.Pramod Kumar Rai, Sr.Standing
counsel and Mr.Deepak Anand,
Jr.Standing Counsel for R-3.

CORAM:

HON'BLE MR. JUSTICE S. RAVINDRA BHAT

HON'BLE MS. JUSTICE DEEPA SHARMA

ORDER

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31.08.2016

1. The petitioner is aggrieved against the impugned order-in-original made by the commissioner which has resulted in confiscation order with the option to redeem the goods on payment of redemption fine, and has also imposed penalty. It is submitted that the said impugned order was made without providing copies of documents which were relevant and material to the petitioners' defence.
2. The case pertains to a consignment of telecom equipment. On the basis of information received, the DRI conducted investigation and detained goods which were sought to be cleared. The petitioners state that at the time of detention of the goods, documents in its possession relating to the case were also seized. It relies upon a letter

written to the customs authorities on 21.09.2009 styled as an interim reply which first mentions that the documents are necessary for a full reply. The petitioner had questioned the detention of the goods in writ proceedings which was dismissed on 30.10.2009. Aggrieved by the order of the Division Bench, the petitioner approached the Supreme Court by way of a Special Leave Petition. Apparently SLP was heard and the judgment was reserved. Later the court released the matter from part-heard and in the light of the fact that the Commissioner by an order of 15.03.2016 had passed the order-in-original dismissed the petition.

3. During the pendency of the proceedings, the Commissioner proceeded to hear the petitioner on 09.03.2016. The order sheet in respect of that hearing contains a reference to the petitioner's request for release of documents or photocopies thereof which should be furnished to it. However, the respondent apparently did not ensure that such copies were provided. In this background, the impugned order confiscating the goods and imposing the penalty was passed.

4. Pursuant to the previous direction, the respondents have today brought in court copies of the 14 shipping bills and copy of the letter of RBI confirming the GR waivers. The factual discussion clearly reveals that even though the petitioner was unsuccessful in persuading the courts that the detention of the goods was illegal and the customs authorities refused to act for a considerable period even during the time the Special Leave Petition was pending, yet at the fag end only one hearing was provided i.e. on 09.03.2016. Even in that hearing, the petitioner had urged specifically that the relevant copies of documents

have not been provided. The Commissioner has in our opinion overlooked this salient aspect. This has resulted in facial prejudice to the petitioner who in the absence of copies of the bill (the claim being that the documents in its possession being detained and the goods were taken into custody) could not effectively defend itself in the show cause notice proceedings. This court is persuaded to accept the petitioner's contention in this regard, considering that in the present case impugned order-in-original has resulted in serious and adverse consequences and appellate remedy would entail the petitioner having to deposit at least 7.5 % of the penalty i.e. out of ₹5 crores as a pre-condition for the hearing of its appeal.

5. In the circumstances, given that only one hearing took place in March, 2016 which culminated into the order of 15.03.2016, the court hereby quashes the impugned order-in-original. In view of the fact that the respondents have now furnished the copies of the relevant documents, the petitioner shall file its reply, if any, within two weeks from today. The commissioner shall thereafter start the proceedings and ensure that the final order, after providing appropriate hearing to the petitioner, is issued within three months from today.

6. The writ petition is allowed in the above terms.

S. RAVINDRA BHAT, J

DEEPA SHARMA, J

AUGUST 31, 2016

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